



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09 132,156	08.11.1998	CARL T. WITTWER	8616.CIP3.CO	8930

7590 09.10.2002

FLEHR HOHBACH TEST  
ALBRITTON & HERBERT LLP  
FOUR EMBARCADERO CENTER, SUITE 3400  
SAN FRANCISCO, CA 941114187

EXAMINER
----------

MARSCHER, ARDIN H

ART UNIT	PAPER NUMBER
----------	--------------

1631

DATE MAILED: 09/10/2002

28

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
**09/132,156**

Applicant(s)  
**Wittwer et al.**

Examiner  
**Ardin Marschel**

Art Unit  
**1631**



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 3/11/02 and 6/19/02
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 59-90 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 59-90 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on Jun 19, 2002 is/are a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☒ Interview Summary (PTO-413) Paper No(s). 23 & 24
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 6) ☐ Other:

Applicants' arguments, filed 3/11/02 and 6/19/02, have been fully considered but they are not deemed to be persuasive. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

The oath or declaration is defective. A new oath or declaration in compliance with 37 C.F.R. § 1.67(a) identifying this application by its Serial Number and filing date is required. See M.P.E.P. §§ 602.01 and 602.02.

The oath or declaration is defective because:

Non-initialed alterations have been made to the oath or declaration (see 37 C.F.R. §§ 1.52(c) and 1.57). It is noted that no replacement oath or declaration has been filed.

Claims 59-80 and 90 are rejected, as discussed below, under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

This rejection is maintained from the previous office action, mailed 10/24/01, and as necessitated by amendment which added claim 90. The phrase "about 30-60 second" in claims 59, line 12, and 70, lines 12-13, causes these claims and claims dependent therefrom because it is vague and indefinite as to

whether the "about" limitation applies only to the lower 30 second time or both the 30 and 60 second time periods.

Clarification via clearer claim wording is requested.

PRIORITY DATE:

The REMARKS, filed 3/11/02, are deemed to reasonably provide priority for the instant claims 59-90 to the filing date of the parent application serial number 07/534,029 which is June 4, 1990.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 81-85 are rejected under 35 U.S.C. § 102(a) as being clearly anticipated by Wittwer et al. [NAR 17(11):4353(1989)].

Upon reconsideration this reference cites authors which are different from the instant application thus qualifying as a reference by others published prior to the priority date of the instant claims. A Katz type Declaration may possibly overcome this rejection. It is noted that rapid thermal cycling is disclosed in this reference. A temperature profile is shown in Figure 3 on page 4355 wherein a temperature drop from 90 degrees

C. to 40 degrees C. occurs in less than 30 seconds. This is a lowering of temperature rate of 50 degrees per 30 seconds or 1.67 degrees C. per second. This rate meets the rate limitation of instant claim 81. It is noted that the temperature profile also discloses step a) of instant claim 81 as well as step c) of instant claim 82. Thus, the above listed claims are anticipated by the reference.

Claims 59-90 are rejected under 35 U.S.C. § 102(a) as being clearly anticipated by Wittwer et al. [Analytical Biochemistry 186:328(1990)].

Upon reconsideration this reference cites authors which are different from the instant application thus qualifying as a reference by others published prior to the priority date of the instant claims. A Katz type Declaration may possibly overcome this rejection. It is noted that rapid thermal cycling is disclosed in this reference. A temperature profile is shown in Figure 2 on page 329 which appears to be the same as instant Figure 5. This publication apparently discloses the instant invention, but is published on May 1, 1990, which is prior to the instant filing date.

No claim is allowed.

Papers related to this application may be submitted to Technical Center 1600 by facsimile transmission. Papers should be faxed to Technical Center 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notices published in the Official Gazette, 1096 OG 30

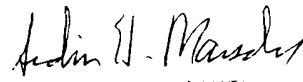
(November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993) (See 37 CFR § 1.6(d)). The CM1 Fax Center number is either (703)308-4242 or (703)305-3014.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ardin Marschel, Ph.D., whose telephone number is (703)308-3894. The examiner can normally be reached on Monday-Friday from 8 A.M. to 4 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward, Ph.D., can be reached on (703)308-4028.

Any inquiry of a general nature or relating to the status of this application should be directed to Patent Analyst, Tina Plunkett, whose telephone number is (703)305-3524 or to the Technical Center receptionist whose telephone number is (703)308-0196.

September 6, 2002

  
ARDIN H. MARSCHEL  
PH.D. BARYER MINOR